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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,797	10/19/2004	Toni Kopra	KOLS.155US	4278
7590 Hollingsworth & Funk, LLC Suite 125 8009 34th Avenue South Minneapolis, MN 55425			EXAMINER RUSTEMEYER, BRETT J	
			ART UNIT 2426	PAPER NUMBER
			MAIL DATE 12/24/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/511,797	Applicant(s) KOPRA ET AL.
Examiner BRETT RUSTEMEYER	Art Unit 2426

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 December 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: none.
Claim(s) objected to: none.
Claim(s) rejected: 1-25.
Claim(s) withdrawn from consideration: none.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See continuation sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Annan Q Shang/
Primary Examiner, Art Unit 2424

Continuation of 3. NOTE: The proposed amendments to claims 1, 11, and 21 have changed the scope of all pending claims. Thus, the proposed amendments would require further search and consideration from the Examiner

Continuation of 11. The proposed amendments does NOT place the application in condition for allowance because: Since the amendments change the scope of the claims, further search and consideration by the Examiner is required to determine patentability of the claims

The Applicant alleges:

"The Office Action includes a new ground of rejection; specifically, Claims 5, 11-20, and 23 are now rejected based upon Lewis (previously-cited) as modified by the teachings of the newly-cited references U.S. Publication No. 2002/0055343 by Stetzler et al. (hereinafter "Stetzler") and WO 01/45308 to Robinson (hereinafter "Robinson")."

The Examiner respectfully disagrees:

According to Office Action dated February 22nd, 2008, hereinafter "Examiner's First Action", the Examiner rejected claims 5, 11-20, and 23 under 35 U.S.C. § 103(a) as being unpatentable over Lewis (Emphasis Added, Page 7 of Examiner's First Action). Specifically, Examiner took Official Notice for Lewis failing to teach the limitation "delivering the object identification ... as an RDS broadcast" as recited in claim 5, and the limitation "a radio system including at least one base station" from claim 12. While the Lewis reference was noted to as being deficient in teaching the respective highlighted limitations of claims 5 and 11, Lewis reference was not identified in the obviousness statement.

According to Applicant's Response submitted May 27th, 2008, hereinafter "Applicant's First Response", the Applicant states:

"Regarding the § 103(a) rejection of Claims 5, 11-20, and 23, Applicant further traverses because the asserted modifications of Lewis do not overcome the above-discussed deficiencies in Lewis. For example, none of the asserted modifications to the broadcast system or alleged radio system of Lewis provide correspondence to the claimed sending of a transaction signal with the object identification through a radio system. As the asserted modifications to Lewis fail to provide correspondence to limitations absent from Lewis, the modified teachings of Lewis still fail to correspond to each of the claimed limitations thereby rendering the rejection of Claims 5, 11-20, and 23 improper. Applicant accordingly requests that the rejection be withdrawn."

"Further, Applicant traverses the § 103(a) rejection because the taking of Official Notice appears to rely upon an unidentified reference. The assertions that it "would have been obvious to incorporate in Wells" at pages seven and eight appear to refer to a reference (Wells) not identified in the Office Action. Without proper identification of the asserted teachings, Applicant cannot ascertain the propriety of the rejection. If this rejection is to be maintained, Applicant request clarification of the asserted teachings relied upon in forming the rejection. Without further information, Applicant traverses the rejection."

The Examiner contests that the Applicant challenged the Examiner's use of Official Notice to claims 5, 11-20, and 23 under 35 U.S.C. § 103(a) as being unpatentable over Lewis in the following statements:

"As the asserted modifications to Lewis fails to provide correspondence to limitations absent from Lewis, the modified teaching of Lewis still fail to correspond to each of the claimed limitations thereby rendering the rejection of Claims 5, 11-20, and 23 improper." and "Without proper identification of the asserted teachings, Applicant cannot ascertain the propriety of the rejection. If this rejection is to be maintained, Applicant request clarification of the asserted teachings relied upon in forming the rejection. Without further information, Applicant traverses the rejection."

According to Office Action dated September 3rd, 2008, hereinafter "Examiner's Final Action", the Examiner addressed the Applicant's challenge to the Examiner's Official Notice pertaining to claims 5, 11-20, and 23 (See Pages 7-9 of Examiner's Final Action). Thus, it was the Applicant's challenge to the Examiner's use of Official Notice which prompted the Examiner support his finding with adequate evidence (Stetzler and Robinson).

As such, if an Examiner adds a reference in the next Office Action (i.e., Examiner's Final Action) after the Applicant's rebuttal (Applicant's First Response), and the newly added reference is added only as directly corresponding evidence to support the prior common knowledge finding, and does not result in a new issue or constitute a new ground of rejection, the Office action may be made final. (See MPEP § 2144.03 [R-6] (d))